



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

**[SATS No. KY-256-FOR; Docket ID: OSM-2012-0014;
S1D1SSS08011000SX066A00067F154S180110;
S2D2SSS08011000SX066A00033F15XS501520]**

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening of the public comment period and opportunity for public hearing.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are reopening the public comment period on the proposed amendment to the Kentucky regulatory program (the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) that was originally published on

February 20, 2013. The public comment period and opportunity for public hearing is being reopened to incorporate subsequent information (emergency regulations, permanent regulations, legislation, and revised statutes) that we received from Kentucky to address a deficiency in the Kentucky program regarding reclamation bonds and to revise its program to be administered in a manner consistent with SMCRA and the Federal regulations.

This document gives the times and locations that this proposed amendment to the Kentucky program is available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on the proposed rules until 4:00 p.m., Eastern Standard Time (EST) [Insert date 30 days after date of publication in the FEDERAL REGISTER]. If requested, we will hold a public hearing on [Insert date 25 days after date of publication in the FEDERAL REGISTER]. We will accept requests to speak until 4:00 p.m., EST on [Insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by SATS No. KY-256-FOR and OSM Docket No. OSM-2012-0004, by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. The proposed rule has been assigned Docket ID: OSM-2012-0014. Please follow the online instructions for submitting comments.
- E-mail: *Mr. Robert Evans, bevans@osmre.gov*
- Fax: (859) 260-8410
- Mail/Hand Delivery: Mr. Robert Evans, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503. Please include the rule identifiers (SATS No. KY-256-FOR and Docket ID OSM-2012-0014) with your comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Kentucky program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or the full text of the program amendment is available for you to read at www.regulations.gov.

Mr. Robert Evans, Field Office Director
Lexington Field Office
Office of Surface Mining Reclamation and Enforcement
2675 Regency Road
Lexington, Kentucky 40503
Telephone: (859) 260-3900.
E-mail: *bevans@osmre.gov*.

In addition, you may review a copy of the amendment during regular business hours at the following location:

Mr. Steve Hohmann, Commissioner
Kentucky Department for Natural Resources
2 Hudson Hollow
Frankfort, Kentucky 40601
Telephone: (502) 564-6940.
E-mail: *Steve.Hohmann@ky.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Evans, Office of Surface Mining Reclamation and Enforcement, Telephone: (859) 260-3900. E-mail: *bevans@osmre.gov*.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, “. . . State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval, in the May 18, 1982, Federal Register (47 FR 21434). You can also find later actions concerning the Kentucky program and program amendments at 30 CFR 917.11-917.17.

II. Description of the Proposed Amendment

Kentucky submitted information on three occasions in response to a Notice under 30 CFR Part 733 that we sent to Kentucky on May 1, 2012 (Docket ID OSM-2012-0014) regarding deficiencies in its bonding program. These submissions are intended to address the noted deficiencies and were submitted as follows: September 28, 2012 (emergency and permanent administrative regulations), July 5, 2013 (House Bill (HB) 66 and emergency and permanent regulations), and December 3, 2013 (revised statutes and permanent regulations). Below is a summary of those submissions.

A. Kentucky Response (First Submission, September 28, 2012): We announced receipt of the submission on September 28, 2012, (first amendment request) in the February 20, 2013 Federal Register (78 FR 11796). We are summarizing the content of that submission again. Our intent is to issue one decision pertaining to both that submission and the two additional submissions announced in this Notice.

The first amendment submission included program changes intended to take immediate action involving the financial inadequacies of the bond program. These program changes are identified as either emergency Kentucky Administrative Regulations (KARs) or corresponding permanent (ordinary) KARs. Both the emergency and permanent regulations were signed by the Secretary, Energy and Environment Cabinet on May 4,

2012 and submitted to the Kentucky Legislative Research Commission (LRC) on that date. Kentucky recognizes emergency regulations as being valid for 180 days unless permanent regulations are approved and replace the emergency regulations.

Since Kentucky permanent regulations were approved on September 6, 2012, the emergency regulations expired and we will not be rendering a decision on the emergency regulations in this, or any future, rulemaking. Instead, we will issue a decision only on the permanent regulations. We are including only a brief summary of the emergency administrative regulations, along with a more detailed description in the corresponding permanent administrative regulations. Significant program changes that have been submitted for approval are highlighted below. Minor changes such as typographical corrections, cross-reference changes, and paragraph renumbering are not mentioned.

1. Emergency Kentucky Administrative Regulations

- *405 KAR 10:011E*: This is an emergency regulation (as noted by an E following the section number) and is an emergency repealer that removes the following two administrative regulations from Chapter 10 of Title 405: Chapter 405 KAR 10:010, General Requirements for Performance Bond and Liability Insurance, and 405 KAR 10:020, Amount and Duration of Performance Bond. With the exception of 405 KAR 10:010, sections 4 and 5, the contents of the repealed sections are being relocated into a new administrative regulation which will contain all information on bonding surface

mine disturbances (See 405 KAR 10:015 addressed below). Section 4, Requirement to File a Certificate of Liability, and Section 5, Incorporation By Reference, are being relocated to 405 KAR 10:030, which is addressed below.

- *405 KAR 10:015E*: This is an emergency regulation and it immediately implements certain provisions of Kentucky's plan to address the bonding deficiencies. This emergency regulation is identical to the permanent (ordinary) regulations at 405 KAR 10:015 noted below.

2. Permanent (Ordinary) Kentucky Administrative Regulations

- *405 KAR 10:015, General bonding provisions*: This is a new regulation that combines two repealed sections (405 KAR 10:010 and 10:020 mentioned above) and incorporates parts of 405 KAR 10:030 (addressed below). It consolidates into one regulation all current existing bonding criteria, types of bonds, bonding methods, terms and conditions of bonds, and new calculation protocols. It also contains a protocol for bond calculation for demolition and disposal costs for materials used in mining operations at preparation plants. In addition, it provides for the calculation of costs associated with mine sites that have been identified as producers of substandard effluent discharges requiring long term treatment. The following significant program changes are included within this regulation:

- *Section 6, Determination of Bond Amounts:* This section allows the cabinet to use the reclamation costs submitted in the permit application to establish the bond amount required, if those costs are higher than the reclamation costs calculated by the cabinet. It also requires the cabinet to review bond amounts established in the regulations at a minimum of every two years to determine if those amounts are adequate after consideration of the impacts of inflation and increases in reclamation costs.
- *Section 7, Minimum Bond Amount:* This section increases minimum bond amounts to \$75,000 for the entire surface area under one permit, \$75,000 per increment for incrementally bonded permits, \$50,000 for a permit or increment operating on previously mined areas, and \$10,000 for underground mines that have only underground operations (i.e., no surface facilities).
- *Section 8, Bonding Rate of Additional Areas:* This section establishes new, increased bond amounts as follows:
 - \$2,500 per acre and each fraction thereof for coal haul roads, other mine access roads, and mine management areas;
 - \$7,500 per acre and each fraction thereof for refuse disposal areas;
 - \$10,000 per acre and each fraction thereof for an embankment sediment control pond. Each pond must be measured separately if the pond is located off-bench downstream of the proposed mining or storage area. The cabinet

also may apply this rate to partial embankment structures as deemed necessary;

- \$3,500 per acre and each fraction thereof for coal preparation plants. In addition, the bond amount must include the costs associated with demolition and disposal of concrete, masonry, steel, timber, and other materials associated with surface coal mining and reclamation operations;
 - \$2,000 per acre and each fraction thereof for operations on previously mined areas;
 - \$3,500 per acre and each fraction thereof for all areas not otherwise addressed; and
 - For permits with substandard drainage that require long-term treatment, the cabinet must calculate and the permittee must post an additional bond amount based on the annual treatment cost provided by the permittee, multiplied by 20 years. In lieu of posting this additional bond amount, the permittee may submit a satisfactory reclamation and remediation plan for the areas producing the substandard drainage.
- *Section 11, Supplemental Assurance:* This section now includes the supplemental assurance requirements previously located at 405 KAR 16:020 (see summary of 16:020 below) and increases the supplemental assurance amount from \$50,000 to \$150,000.

- *405 KAR 10:030. General requirements for liability insurance:* This regulation has been amended. Prior to this revision the regulation included general requirements for the types, terms, and conditions of performance bonds and liability insurance. In this revision, all references to performance bonds have been removed from sections 1 through 3 and now only requirements for liability insurance are included (former sections 4 and 5 have been renumbered as sections 2 and 3). Requirements for performance bonds have been moved to 405 KAR 10:015 as noted above. Also, two forms are specified as requirements related to liability insurance coverage: Certificate of Liability Insurance, and Notice of Cancellation, Nonrenewal or Change of Liability Insurance.
- *405 KAR 16:020. Contemporaneous reclamation:* This regulation has been amended. A new section is included (Section 1, Definitions) and it defines the term “completed reclamation.” Subsequently, other sections have been renumbered. Other changes include adding references to the new section, 405 KAR 10:015, and removing the section involving Supplemental Assurance. Regulatory information regarding supplemental assurance has been relocated to 405 KAR 10:015, noted above.

We are not seeking comments on the emergency regulations at 10:011E and 10:015E as they have been replaced by 10:015. If you submitted comments on the emergency and permanent regulations noted above during the public comment period when we published

the first submission (79 FR 11796) you do not need to resubmit them, we will be considering these comments in our analysis of the total submission.

B. Kentucky Response: (Second Submission, July 5, 2013, and Third Submission, December 3, 2013): The first submission primarily addresses general bonding provisions (bonding criteria, types of bonds, bonding methods, terms and conditions of bonds, and new calculation protocols). The second and third submissions address the source of revenue used to supplement permit-specific bonds, the Kentucky Reclamation Guaranty Fund (KRGF), the responsible entities for managing the fund, and other bond pool related provisions.

On March 11, 2013, the General Assembly of the Commonwealth of Kentucky enacted HB No. 66 (HB 66), which addressed the deficiencies of the bonding program. This bill had an emergency clause (section 14) and therefore became effective upon signature of the Governor on March 22, 2013. On July 5, 2013, Kentucky submitted HB 66 and emergency and permanent regulations to OSMRE for approval.

Kentucky Revised Statutes (KRS), sections were submitted to OSMRE for approval in December 2013, along with final permanent regulations. We are including a summary of the KRS sections along with the corresponding HB sections even though the revised statutes were submitted with the third submission. This is being done since the HB and

statutes are interrelated. The following summarizes the HB, revised statutes, and emergency and permanent regulations:

1. Legislative Action and Revised Statutes- House Bill 66 (Second Submission) and

Kentucky Revised Statutes (Third Submission): On March 11, 2013, HB 66 was enacted and on March 22, 2013, it was signed by the Governor. The major changes involved repealing KRS sections 350.700 through 350.755 (which applied to the voluntary bond pool fund and commission) and adding new sections 350.500 through 350.521. The following sections of the bill are noted along with the corresponding KRS sections, where available.

- *HB 66 Section 1 – KRS 350.500. Definitions for KRS 350.500 to 350.521:* This is a new section that provides the HB 66 definitions of actuarial soundness, date of the establishment of the new fund KRGF, Reclamation Guaranty Fund Commission (RGFC), and voluntary bond pool fund.
- *HB 66 Section 2 – KRS 350.503. Kentucky reclamation guaranty fund:* This is a new section that establishes the KRGF, which is assigned to the cabinet. The KRGF is an interest-bearing reclamation account, requiring mandatory participation and designed to cover the excess costs of reclamation for coal mining sites when the permit-specific performance (penal) bond is inadequate. This does not apply to permits forfeited prior to January 1, 2014, except for obligations that may arise from the

forfeiture of bond prior to that date secured by the voluntary bond pool. Funds are also used to compensate the cabinet for costs incurred for administering the fund, procuring audits and actuarial studies, and operating and necessary legal expenses of the RGFC. The fund cannot be used for the long-term treatment of substandard water discharges or to repair subsidence damage. In addition, the fund is exempt from the requirements applicable to insurers.

- *HB 66 Section 3 – KRS 350.506. Reclamation Guaranty Fund Commission -- Membership -- Bylaws -- Meetings -- Conflicts of Interest -- Applicability of Executive Branch Code of Ethics:* This is a new section that creates the RGFC that is attached to the cabinet. This section provides the make-up of the RGFC membership; the terms and conditions of membership appointments and the establishment of bylaws, official domicile, meeting frequency, member stipend; and attendance requirements. Further, it addresses limits on direct or indirect financial interest of the members, membership immunity from civil or criminal proceedings, and ethics terms.
- *HB 66 Section 4 – KRS 350.509. Duties of commission:* This is a new section and it outlines the responsibilities of the RGFC that include reviewing, recommending, and promulgating regulations necessary to: monitor and maintain the fund; establish a structure for processing claims and making payments; establish the mechanisms for the review of the viability of the fund; set a schedule for penalties for late payment or failure to pay fees and assessments; review and assign classification of mine types for

fee assessments; establish a structure for the payment of fees and assessments;
authorizing expenditures from the fund; notifying the permittees of
suspension/reinstatement of fees, annually report the status of the KRGF, and take
action against permittees to recover funds if necessary.

- *HB 66 Section 5 – KRS 350.512. Office of the Reclamation Guaranty Fund - Duties of executive director:* This is a new section and establishes an Office of the Reclamation Guaranty Fund (ORGF) and appoints an executive director to manage its affairs and provides for the responsibilities of the executive director.
- *HB 66 Section 6 – KRS 350.515. Mandatory participation in fund -- Initial capitalization --One-time assessments -- Full-cost bond in lieu of participation:* This is a new section and mandates that all surface coal mining permittees be participants in the fund, unless the permittee elects to provide full-cost bond. Member entities are given the option to either provide full-cost bond based on a reclamation cost estimate that reflects potential reclamation costs to the cabinet or participate in the fund, which includes assessment of fees noted in 350.518 below.

In addition, this section also provides for the initial capitalization of the KRGF fund that consists of: 1) transfer of the assets and liabilities of the voluntary bond pool fund; 2) a one-time start-up assessment for all current permittees as of July 1, 2013 in the amount of \$1,500; and 3) a one-time \$10 per active permitted acre assessment. Entities entering the

fund after July 1, 2013 shall pay a one-time assessment of \$10,000 to the fund. No individual permit shall be issued until the one-time assessments are paid. Members of the former voluntary bond pool are exempt from the one-time start-up assessment and active permitted acre assessment. If an applicant opts out and elects to provide a full-cost bond, the applicant shall not be subject to these assessments.

- *HB 66 Section 7 – KRS 350.518. Permittee to submit permit-specific bond under KRS 350.060(11) – Tonnage fees – Assignment of mine type classification – inclusion of future permits of existing classification - Inclusion of future permits of existing voluntary bond pool fund members – Permit-specific penal bond – Administrative regulations – Suspension of permit for arrearage in fees – Distribution of penalties collected under KRS 350.990(1) – Rights and remedies:*

This is a new section that provides that:

- *Permit-specific bond:* Each member permittee (those that did not elect to opt-out of the fund) shall also submit a permit-specific bond.
- *Tonnage fees:* In addition to the bond, each permittee shall pay a fee for each ton of coal mined and sold by surface and underground coal mining operations from each permit area. In addition, the RFGC may request and review documents and reports provided by the Kentucky Department of Natural Resources (DNR) and OSMRE to verify production records.

- *Assignment of mine type classification:* The fee assessment is based on the type of permit classification.

- *Inclusion of existing VBP members:* This section also provides that permits that were subject to the voluntary bond pool: 1) are excluded from the one-time start-up assessment/fee; 2) are subject to the new tonnage fees, instead of the tonnage fees which had been previously established (prior to July 1, 2013); and 3) will continue to receive subsidization of the reclamation bonding authorized under these new statutes and new permanent regulations.

The KRGF will continue to provide coverage for the existing bonds previously issued for them by the voluntary bond pool. It also provides the criteria that members of the voluntary bond pool as of July 1, 2013 must meet in order to be included in the Fund. This section also specifies a maximum increase for which the total amount of bonds issued to any one member of the voluntary bond pool will apply.

- *Permanent Regulations:* Administrative regulations will be promulgated by the RGFC to address the reporting and payment of fees (see administrative regulations promulgated).

- *Suspension of permit for arrearage in fees:* This section also provides that the cabinet shall suspend a permit if the permittee is in arrearage in the payment of any fees assessed to the permit. Once the arrearage has been paid in full, the permit suspension may be lifted. The suspension may be appealed pursuant to the hearing provisions of KRS 350.0301, Petition challenging determination of cabinet, Conduct of hearings, etc.
- *Distribution of Penalties:* This section also provides the manner in which penalties collected shall be deposited and applied.
- *Rights and Remedies:* Any person who considers him or herself to be aggrieved by any determination made by the commission shall have all of the rights and remedies provided in section 350.0301 pertaining to petitions challenging determinations of the cabinet.
- *Other Provisions and Responsibilities:* This section also provides the terms and conditions for which an annual fee based on acreage shall apply for non-production permits (i.e., coal preparation and processing operations, loading activities, coal haulage and access roads). It also provides the terms and conditions for which a fee may apply for any expired permits or other permits not subject to the fees mentioned above.

In addition, if an entity was not a participant in the Fund as of March 22, 2013, a permit may be considered for inclusion in the fund if the entity and entity's owners can meet eligibility standards established in permanent regulations promulgated by the RGFC. Any permits accepted into the fund shall require payment of a permit-specific performance bond based on acreage and shall pay the actuarially determined tonnage rates prescribed. The RGFC shall make changes to the rates in an amount sufficient to maintain actuarial soundness of the fund in accordance with the annual actuarial study.

- *HB 66 Section 8 – KRS 350.521. Forfeiture of bonds for permits covered by fund -*
- Use of additional moneys when bond insufficient to cover estimated reclamation cost: This is a new section that provides that bond for permits covered by the fund forfeited after January 1, 2014 shall be placed in the fund. It also provides that in the event that a forfeited bond is insufficient to reclaim the permit to the requirements, any outstanding permit-specific performance bond for reclamation on the forfeited permit shall be used first before any additional monies necessary to reclaim the permit area are withdrawn from the KRGF. It also provides the manner in which the request from the cabinet and transfer shall occur. The commission, its members, and employees shall not be named a party to any forfeiture action.

- *HB 66 Section 9 – KRS 12:020, Enumeration of departments, program cabinets, and administrative bodies:* This section is amended to add the ORGF, DNR to the list of departments, program cabinets and their departments, and the respective major bodies.
- *HB 66 Section 10 – KRS 350.595. Application for inclusion under Abandoned Mine Land Enhancement Program -- Coverage under Kentucky reclamation guaranty fund:* This section is amended to provide e that an applicant who desires to remine property shall send the application for the use of bond pool funds (for qualified AML enhancement projects) to the RGFC instead of the Bond Pool Commission. It also adds appropriate references or deletes references related to the Bond Pool.
- *HB 66 Section 11 – KRS 350.990. Penalties:* This section is amended to reflect that all sums recovered, except those moneys collected in excess of \$800,000 in any fiscal year be deposited 50% in the reclamation guaranty fund (rather than the bond pool fund). It removes the \$16 million base amount below which the former bond pool fund could not be allowed to sink.
- *HB 66 Section 12 – KRS 350.700 to 350.755:* The following sections are repealed due to the abolishment of the voluntary bond pool:

- 350.700. Bond pool fund established;
- 350.705. Bond Pool Commission;
- 350.710. Powers of the Commission;
- 350.720. Bond Pool (Criteria compliance records);
- 350.725. Membership fee – tonnage fee;
- 350.730. Tonnage fee suspension or reinstatement;
- 350.735. Permit-specific penal bond;
- 350.740. Permit issuance;
- 350.745. Payments from fund for reclamation;
- 350.750. Revocation of membership in bond pool; and
- 350.755. Grounds for refusal of permit.

We note that it is our understanding that HB 66 was intended to also repeal 350.715, Pool administrator, and is consistent with the removal of all other sections involving the voluntary bond pool references. However, this section remains in effect and cannot be removed until the repeal is submitted for approval.

- *HB 66 Section 13 – (no corresponding KRS section since a revised statute is not necessary):* This section provides that the assets and liabilities of the voluntary bond pool be immediately transferred to the KRGF. Any records, files and documents associated with the activities of the voluntary bond pool shall also be transferred. The

affairs of the voluntary bond pool shall be wound up, and the cabinet shall have disposition over placement or transfer of any personnel of the voluntary bond pool. No existing contract shall be impaired.

- *HB 66 Section 14 – (no corresponding KRS section since a revised statute is not necessary):* This section provides for the immediate implementation of the provisions of the bill.

2. *Kentucky Administrative Regulations*

- *Emergency Kentucky Administrative Regulations (Second Submission):* Following passage of HB 66, Kentucky developed emergency and permanent administrative regulations to remove requirements that were no longer applicable as part of Kentucky's bonding program and to prevent overlapping requirements for the former members of the voluntary bond pool. Both the emergency and permanent regulations were submitted to the Legislative Research Commission on July 3, 2013. These permanent regulations were approved by the Secretary, Energy and Environment Cabinet, on November 7, 2013. On that same date, the emergency regulations expired. Therefore, we will not be rendering a decision on the emergency regulation in this, or any future, rulemaking. Instead, we will issue a decision only on the permanent regulations.

- *405 KAR 10:001E, Definitions:* This is an emergency regulation that is necessary to immediately implement amendments to match other emergency regulations filed simultaneously. This section is identical to the permanent regulation (405 KAR 10:001), which is described below.

- *405 KAR 10:070E, Kentucky Reclamation Guaranty Fund:* This is an emergency regulation that is necessary to immediately implement the provisions of HB 66 related to the establishment of the KRGF and the RGFC. The emergency regulation will be replaced by a permanent regulation at 10:070, which is not identical to this emergency regulation. The difference is that the emergency regulation includes provisions for the initial capitalization of the KRGF (one time assessments) and the terms and conditions in which these assessments are paid. It also provides the terms in which former voluntary bond pool members report coal mined and sold until and after January 1, 2014. These two provisions are not included in the permanent regulation (405 KAR 10:070) described below.

- *405 KAR 10:080E: Full-cost bonding:* This is an emergency regulation that is necessary to immediately implement the provisions of HB 66 allowing permittees to not participate in the KRGF and provide full-cost reclamation bonds for coal mine surface disturbances. This emergency regulation will be replaced by a permanent regulation at 10:080, which is not identical to this emergency regulation. The difference is that this emergency regulation includes provisions

pertaining to members with permits issued prior to July 1, 2013. It provides the terms and conditions in which the permittee shall make such election. This provision is not included in the permanent regulation (405 KAR 10:080) described below.

- *405 KAR 10:090E, Production Fees:* This is an emergency regulation that is necessary to immediately set the amount of the tonnage fees required by section 7(2)(a) and (b) of HB 66. The emergency regulation will be replaced by a permanent regulation, which is identical to this emergency regulation.

- *405 KAR 10:201E, Repeal of 405 KAR 10:200:* This is an emergency regulation that repeals Chapter 405 KAR 10:200, Kentucky Bond Pool, from Kentucky's administrative regulations: This emergency administrative regulation is necessary to remove requirements that are no longer applicable as part of Kentucky's bonding program and prevent overlapping requirements for those former members. The emergency administrative regulation will not be replaced by a permanent regulation.

3. Permanent (Ordinary) Kentucky Administrative Regulations (Second and Third Submissions): In addition to the emergency regulations, Kentucky also submitted proposed corresponding administrative regulations that revise its bonding administrative

regulations in its approved permanent regulatory program. Except as mentioned above, these permanent regulations are, for the most part, identical to the emergency regulations submitted. These permanent regulations were signed by the Secretary, Energy and Environment Cabinet on July 7, 2013 and were submitted as final to OSMRE in the second submission, with the exception of 405 KAR 8:010, which was submitted with the third submission.

- *405 KAR 10:001. Definitions for 405 KAR Chapter 10:* This regulation is amended to add the definition of the following terms: acquisition; active acre; actuarial soundness; dormancy fee; coal mined and sold; final disposition; full-cost bonding; Kentucky Reclamation Guaranty Fund; Office of the Reclamation Guaranty Fund; opt-out; member, non-production fee; and acquisition as it relates to criteria for identifying land historically used for cropland. The definitions of bond pool, bond pool administrator, and bond pool commission have been deleted. Bond pool and bond pool administrator have been replaced with and definitions of KRGF and the ORGF.
- *405 KAR 10:015. General bonding provisions:* This regulation is amended to add bonds from the KRGF to the list of types of performance bonds approved by the cabinet and also details how bonds on future permits subsidized by the KRGF for former VBP members will be released. It also includes the option of providing full-cost bonds to the section on determination of bond amount. The amendment is necessary to clarify that the

regulated entity should provide the calculation for the cabinet's cost of reclamation in the event a full-cost option is chosen.

- *405 KAR 10:070. Kentucky reclamation guaranty fund:* This is a new regulation and provides information related to the operation and sources of revenue for the KRGF, classification of permits, reporting and payment of fees, and penalties. Permittees will be mandatory participants in the KRGF unless they chose to opt-out. These regulations require that permittees comply with reporting requirements, maintain production records, provide initial assessments, pay fees, comply with penalty provisions, and complete and submit required forms.
- *405 KAR 10:080. Full-cost bonding:* This is a new regulation and provides that members have the option to provide full-cost bonds in lieu of maintaining membership in the KRGF (opt out) and the manner in which a permittee shall make such declaration. For full-cost bond elections it also provides for the calculation of bonding estimates and forms required to submit such estimates, the requirement for a registered professional engineer to certify estimates, and the requirement to submit a bond once the Department has accepted the reclamation estimate. A member with permits issued prior to July 1, 2013 that has made the decision to opt-out is required to post full-cost reclamation bonds with the Department before April 30, 2014 on all permits held by the member.

- *405 KAR 10:090. Production Fees:* This is a new regulation and provides information on production fees, the amount of the fees, and the schedule that payments are to be remitted.
- *405 KAR 8:010. General provisions for permits:* This regulation has been amended to provide that permittees shall submit a minor revision application for the purpose of providing a full-cost reclamation bonding estimate to the cabinet. This was done to provide the Division of Mine Permits 30 working days after the notice of administrative completeness to review full-cost bonding revisions. The original provisions allowed for 15 working days.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at www.regulations.gov.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program. As mentioned earlier, if you submitted comments on the first submission during the public comment period (79 FR 11796) you do not need to resubmit them, we will be considering these comments in our analysis of the total submission.

Electric or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any

time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., EST), on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is only limited interest in having an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866 - Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the

public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

<hr/>	<u>December 29, 2014.</u>
David G. Hartos, Deputy Regional Director	Date
Appalachian Region	

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